

ORDINANCE NO.
AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
CHAPTER 9.44 OF THE SAN JOSE MUNICIPAL CODE TO
REGULATE OUTDOOR SMOKING

WHEREAS,

[BD1] **WHEREAS**, on _____, this Ordinance was found to be categorically exempt from environmental review per the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970, as amended, under File No. PP _____;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Section 1. Chapter 9.44 of Title 9 of the San Jose Municipal Code is amended by adding a new section to be numbered and entitled and to read as follows:

9.44.019 Outdoor Dining Area

“Outdoor Dining Area” means any privately owned or publicly owned area, including streets, sidewalks, and Sidewalk Cafes as defined in Section 20.200.1120 of the San Jose Municipal Code, which is available or customarily used by the general public and which is designed, established, or regularly used for consuming food or drink.

Section 2. Chapter 9.44 of Title 9 of the San Jose Municipal Code is amended by adding a new section to be numbered and entitled and to read as follows:

9.44.020 Service Line.

“Service Line” means any outdoor line or queue at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Section 3. Chapter 9.44 of Title 9 of the San Jose Municipal Code is amended by adding a new section to be numbered and entitled and to read as follows:

9.44.021 Designated Smoking Area.

“Designated Smoking Area” means such portion of an Outdoor Common Area that has been designated for smoking by the person with legal control over the common area and which complies with all of the following:

- A. The area is unenclosed.

- B. The area is located at least 30 feet from any operable doorway, window opening or other vent into an enclosed area.
- C. The perimeter of the area is clearly demarcated.
- D. Signs indicate that the area is designated for smoking.

Section 4. Section 9.44.030 of Chapter 9.44 of Title 9 of the San Jose Municipal Code is amended to read as follows:

9.44.030 General prohibition.

Smoking is prohibited in the following places located within the City of San José except as provided in Section 9.44.040:

- A. *Buildings:* All enclosed areas of buildings which are open to the public or which are places of employment.
- B. *Public and common areas of multifamily residential areas:* All enclosed areas of apartments, condominiums and mobilehome parks which are open to public access or to unrestricted common access by the residents of such places.
- C. *Motor vehicles used in work:* In motor vehicles which meet one (1) of the following conditions:
 - 1. Common carriers for public transit;
 - 2. Vehicles for hire, such as taxicabs;
 - 3. Vehicles which are operated in the course of employment for the use of more than one (1) person at a time during the time of employment.
- D. *Hotel and motel guest rooms:* The enclosed areas of at least fifty (50) percent of the guest rooms located in a hotel or motel. To the greatest extent feasible the smoke free rooms shall be grouped together to each other and separated from rooms where smoking is permitted.
- E. *Stadium and sports arenas:* The seating and eating areas of any outdoor stadium or sports arena. Smoking may be permitted only in specifically designated areas which are not located in close proximity to seating or eating areas.
- F. *City parks:* Park is defined in Chapter 13.44 of Title 13 of the San José Municipal Code, as it may be amended. Without limitation of any other provision of this Code, the definition of "park" for purposes of this section includes sidewalks,

trails and pathways in or around park facilities, park strips and other grounds of any park.

G. In ~~any~~ the following outdoor areas:

1. Areas within twenty-five (25) feet horizontally or vertically of any entrances, exits, operable windows, or air intake openings of any community center or library owned, leased or occupied by the City;
2. All unenclosed common areas of apartments, condominiums and mobilehome parks which are open to public access or to unrestricted common access by the residents of such places, except for areas that have been designated as a Designated Smoking Area by the owner of the property;
3. Outdoor Dining Areas;
4. Service Lines.

Section 4. Section 9.44.040 of Chapter 9.44 of Title 9 of the San Jose Municipal Code is amended to read as follows:

9.44.040 Exceptions.

Smoking may be permitted in the following locations:

- A. Private residences, except where state law prohibits smoking.
- B. Retail tobacco stores which sell primarily tobacco products.
- C. Meeting and banquet rooms which meet the standards set forth in Section 6404.5(d)(3) of the California Labor Code.
- ~~D. Outdoor areas of restaurants.~~
- ~~D~~E. At such areas of the San José International Airport as provided for in Section 9.44.045 of this chapter.
- ~~E~~F. On a stage in a theater during a theatrical performance where a performer is smoking when smoking is part of the performance.
- ~~F~~G. Any property owned or leased by other governmental agencies and used for governmental purposes.

- GH. Upon any outdoor area of any golf course owned or operated by the City that is more than twenty-five (25) feet from any entrance, exit, operable window or air intake opening of any building.

Section 6. Section 9.44.055 of Chapter 9.44 of Title 9 of the San Jose Municipal Code is amended to read as follows:

9.44.055 Enforcement.

- A. To the extent that these provisions are duplicative of Labor Code Section 6040.5, any enforcement shall be pursuant to the Labor Code.
- B. The following provisions of this Chapter shall be enforced directly:
 - 1. Subsection A. of Section 9.44.030 in those areas where there is no exception under this Chapter corresponding to an exception to the definition of "place of employment" as set forth in Labor Code Section 6404.5.
 - 2. Subsections B., C., D., ~~and E., F and G.~~ of Section 9.44.030.
- C. The provisions of this Code which are duplicative or less stringent than Labor Code 6405.5 are hereby suspended and should Labor Code 6404.5 ever be repealed or modified, those suspended sections of this chapter shall then be enforced.

Section 7. Section 9.44.060 of Chapter 9.44 of Title 9 of the San Jose Municipal Code is amended to read as follows:

9.44.060 Posting of signs.

- A. "No Smoking" signs shall be conspicuously posted in every building^[BD2], where smoking is prohibited pursuant to this Chapter, by the owner, operator, manager or other person having control of such room, building, or other place.
- B. In any building where smoking is partially permitted "No Smoking" signs shall be placed in the lobby or in conspicuous places near each entrance to the building stating that smoking is prohibited in the building except in the areas designated as smoking areas.
- C. "Smoking Permitted" signs shall be posted at the entrance to and in any room in an air terminal building in which smoking is expressly permitted under Section

9.44.045. All such signs shall conform to the standards for appearance of signs established by the Director of Aviation.

D. Movie theaters shall indicate on the movie screen prior to each feature motion picture that smoking is prohibited.

E. "Smoking Permitted" shall be posted in any Designated Smoking Area as permitted pursuant to Section 9.44.021 of this Chapter.

PASSED FOR PUBLICATION of title this _____ day of _____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk